

VOLUME II
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 345

**MARYLAND, FOR THE USE OF NADINE Y. LEVIN,
SYDNEY L. JOHNS, ET AL., PETITIONERS,**

vs.

UNITED STATES.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**PETITION FOR CERTIORARI FILED AUGUST 3, 1964
CERTIORARI GRANTED OCTOBER 19, 1964**

INDEX

Original Print

Record from the United States District Court for
the Western District of Pennsylvania
Relevant docket entries in No. 17503 _____
Clerk's note _____

A 1
E 6-16

Page

5. Excerpts from transcript and exhibits pertaining to preliminary issue:

a. Transcript of proceedings, May 29 and 31, 1961 17

Witnesses:

Robert J. Skahan 17

Captain Julius R. McCoy 35

Lieutenant Colonel Victor F. Kilkowski 122

John James Stasko 186

b. Plaintiff's Exhibit 1, Local Flight Clearance 207

Plaintiff's Exhibit 2, Flight Order Number
105 209

Plaintiff's Exhibit 3, Civilian Personnel Man-
ual 210

Plaintiff's Exhibit 4, AFR 60-2 219

Plaintiff's Exhibit 5, File of Bureau of Em-
ployee's Compensation 224

Plaintiff's Exhibit 6, Special Orders No. 182,
dated 13 Sept., 1955 231

Plaintiff's Exhibit 7, AFR 45-2 233

Plaintiff's Exhibit 9, Deposition of Col.
Ebaugh 237

Plaintiff's Exhibit 10, Deposition of Major
Britton 253

Plaintiff's Exhibit 11, Deposition of Gen. Wil-
son 277

	Page
Plaintiff's Exhibit 12, Deposition of Capt. McCoy	343, 416
Plaintiff's Exhibit 13, Deposition of Major Scott	499
Plaintiff's Exhibit 14, Deposition of Col. Kilowski	509
Plaintiff's Exhibit 15, National Guard Regulations No. 75-16	634
Plaintiff's Exhibit 16, National Guard Regulations No. 75-16	647
Plaintiff's Exhibit 17, ANGR 40-01	652
c. Defendant's Exhibit 1, General Orders	660
Defendant's Exhibit 2, Special Order No. 93 ..	662
Defendant's Exhibit 3, Local Flying Area, S.O.P. No. 3	663
Defendant's Exhibit 4, Passengers in Aircraft, S.O.P. No. 9	665
Defendant's Exhibit 5, Local Clearance, S.O.P. No. 18	666
Defendant's Exhibit 7, AFR 45-2	667
Defendant's Exhibit 9, ANGR 50-01	671
6. Interrogatories and Answers of September 1959 ..	677
7. Memorandum, filed Sept. 7, 1961	679
8. Findings of Fact, filed October 27, 1961	679
9. Conclusions of Law, filed October 27, 1961	688
10. Order, filed October 27, 1961	688
11. Supplemental Pretrial Proceedings, filed November 2, 1961	690

Index Continued

iii

	Original	Print
Plaintiff's Exhibit No. 5—Release by Donald A. Chalmers dated May 20, 1958	689	689
Excerpt from interrogatories	690	690
Opinion, Gourley, C. J.	691	691
Proceedings in United States Court of Appeals for the Third Circuit	709	708
Opinion, Smith, J.	709	708
Opinion concurring in result, Hastie, J.	727	725
Dissenting opinion, Staley, J.	728	726
Judgment in Case No. 14,041	734	731
Judgment in Case No. 14,042	735	732
Order denying petition for rehearing	736	733
Clerk's certificate (omitted in printing)	737	733
Order extending time to file petition for writ of certiorari	738	734
Order allowing certiorari	739	734

Captain Julius R. McCoy

was recalled as a witness and having previously been duly sworn was examined and testified as follows:

Examination by Mr. Pettibone:

Mr. Pettibone: Will the Reporter mark this as United States Exhibit for identification No. 1.

(General Orders referred to marked U. S. Exhibit No. 1 for identification.)

Mr. Pettibone: Please hand United States Exhibit for identification No. 1 to the witness.

328 (Paper handed to witness.)

Q. (By Mr. Pettibone) Captain McCoy, will you look at United States Exhibit for identification No. 1.

Were you commissioned as a second lieutenant in the Maryland Air National Guard on 31 January 1952, with rank from January 25, 1952, pursuant to General Orders No. 9, issued by the State of Maryland Military Department, Fifth Regiment Armory, Baltimore, dated 31 January '52? **A.** This appears to be a General Order issued by the State of Maryland, appointing me as a second lieutenant in the Maryland Air National Guard, yes, sir, on the dates indicated.

Q. And that appointment was pursuant to General Order No. 9, an abstract part of which appears in United States Exhibit No. 1 for identification, is that correct? **A.** That is correct.

Q. Now, were you on March 31, 1952, by General Order No. 24, issued by the State of Maryland Military Department, Fifth Regiment Armory, Baltimore, Maryland, given Federal recognition as a second lieutenant in the Maryland

329 National Guard, with date of rank from 25 January 1952? **A.** Again, a portion of the exhibit appears to be a reproduction of a General Order appointing me as a second lieutenant, with Federal recognition in the Maryland Air National Guard.

Q. And does the extract from General Order No. 24, which is shown in United States Exhibit No. 1 for identification, appear to be an extract copy of the orders so extending Federal recognition?

Mr. Mudd: Excuse me, Mr. Pettibone, but I did not hear the first part of your question.

Would you read back the question, Mr. McDonald?

(Question read by the Reporter.)

Mr. Wolcott: Excuse me, Mr. Pettibone, am I to understand from your remarks that these are not complete copies of orders but merely extracts?

Mr. Pettibone: It is an extract of the part of the order which pertains to Second Lieutenant Julius R. McCoy.

Mr. Wolcott: Well, couldn't you, Mr. Pettibone, for my enlightenment, tell me just what has been left out of the Order?

Mr. Pettibone: Nothing that pertains to Captain
330 McCoy. Nothing that pertains to him. The orders that we have been speaking of list a number of individuals, but the other individuals, of course, are of no interest to me in this proceeding.

Mr. Wolcott: I see. Then, insofar as Captain McCoy is concerned, the order is complete.

Mr. Pettibone: That is correct. That is correct.

Mr. Wolcott: Thank you.

May I ask you this, Mr. Pettibone?

Should I find it necessary, would you have any objection to furnishing me with the complete order?

Mr. Pettibone: No, I would be happy to.

Mr. Wolcott: Thank you.

Mr. Pettibone: If you will give me a reasonable time to obtain it.

Mr. Wolcott: Certainly.

Mr. Pettibone: I think it is perhaps in the files of the State of Maryland and in the files of the United States Air Force, so unless we happen to have a full copy, I would have to request it from the State.

Mr. Wolcott: Yes.

331 Mr. Pettibone: I will be glad to get it for you.

Mr. Wolcott: Well, I suppose that applies to all orders that you refer to.

Mr. Pettibone: Yes, sir, that is true.

Mr. Wolcott: Thank you.

The Witness: The answer to your last question is it is correct.

Q. (By Mr. Pettibone) And were you by General Order No. 9, dated 31 January 1952, issued by order of the Governor, State of Maryland Military Department, Fifth Regiment Armory, Baltimore, Maryland, assigned to the 104th Fighter Squadron as a pilot? A. The extract named appears to be a reproduction of a General Order so appointing me.

Q. You are referring to the part of General Order No. 9 which appears in the United States Exhibit for identification No. 1, is that correct? A. That is correct.

Q. Were you subsequently promoted to the rank of First Lieutenant in the Maryland Air National Guard? A. That is correct.

332 Q. Do you remember the date when you were so promoted? A. I think it was in October 1952.

Q. Was that also pursuant to orders issued by the Governor of the State of Maryland, General Orders of the State of Maryland Military Department? A. I assume so.

Mr. Wolcott: We are going to object to that as to form. It calls for a conclusion, and the document speaks for itself.

Q. (By Mr. Pettibone) Now, were you subsequently after that promoted to the rank of Captain in the Maryland Air National Guard? A. That is correct.

Q. Do you remember the date when you were so promoted? A. 1 July 1956.

Q. By whose orders were you so appointed? A. United States Exhibit No. 1 contains an extract from a General Order No. 47, issued by the Military Department, State of

Maryland, that would indicate I was Federally recognized as a Captain on 1 July '56.

Mr. Wolcott: I move that the answer be stricken
333 as not responsive, as it referred to a document that the witness has not stated that he needed to refresh his recollection.

Q. (By Mr. Pettibone) After your promotion to the rank of Captain in the Maryland Air National Guard did you receive Federal recognition in that capacity? A. That is correct.

Q. Was that by General Order No. 7, dated 5 August '56, issued by the Military Department of the State of Maryland, Office of the Adjutant General, Fifth Regiment Armory, Baltimore, Maryland, an extract copy of which appears in United States Exhibit for identification No. 1.

Mr. Wolcott: Objection as to form, calling for a conclusion.

Mr. Mudd: What order was that?

Mr. Wolcott: And the document speaks for itself.

Mr. Pettibone: General Order 47, Roman Numeral III, the first one on this page.

Mr. Mudd: I thought you said 7.

Mr. Pettibone: 47.

The Witness: Again, U. S. Exhibit No. 1 contains
334 what appears to be a reproduction of a General Order granting me Federal recognition as of 1 July '56.

Q. (By Mr. Pettibone) Do you at the present time hold a commission as a Captain in the Air National Guard of the State of Maryland? A. That is correct.

Q. Did you hold such a commission as Captain in the Air National Guard of the State of Maryland at all times to May 20, 1958? A. That is correct.

Q. Do you hold any other commissions at the present time in the United States Air Force? A. I am not positive of the total procedure. This is very possible. I cannot be positive.

Q. Well, have you ever received any orders appointing

you as an officer in the United States Air Force as distinguished from the Air National Guard of the State of Maryland? A. To my knowledge, all of the orders that commission me in the Air National Guard include Federal recognition as part of the commission.

Q. Yes, but that is not my question. My question 335 was this: Have you ever received any orders appointing you as a commissioned officer in the United States Air Force as distinguished from the Air National Guard of the State of Maryland? A. I can say this, that all of the orders to my knowledge include the symbol AF, which to the best of my ability would be to represent Air Force.

Q. Have you ever received any order appointing you as a commissioned officer of any grade, issued by any Headquarters other than the State of Maryland Military Department? A. Not to my knowledge.

Mr. Mudd: May I raise a point of inquiry, Mr. Pettibone? And possibly Captain McCoy may not understand the import of your question.

Are you referring, for instance, to wartime duty, where I believe the witness earlier described this service during the war.

Mr. Pettibone: Well, I am glad you raised the point.

Q. (By Mr. Pettibone) I mean, Captain McCoy, to 336 confine the period of time involved in my question to let us say subsequent to January 25, 1952, at which time you were appointed a second lieutenant in the Maryland Air National Guard, as you have already stated, so that I am not referring to any time prior to that. A. I understand.

Q. As a matter of fact, then, prior to January 25, 1952 were you ever commissioned as an officer—let me change my wording there, so that you will understand my question better, perhaps.

Were any orders ever issued by any Headquarters other than the State of Maryland Military Department commis-

sioning you as an officer in the United States Air Force, or the Army Air Force, or the National Guard, either of the Army or the Air Force? A. I was commissioned in the Army Air Corps on 4 August 1944, and I believe in 1946 in the Army National Guard of West Virginia.

Q. And were you discharged from active duty under your Army commission in 1944 which you just referred to?

A. I was separated from active service in late 1945.

337 Q. Was that by General Orders issued by some military headquarters? A. That is correct.

Q. Do you happen to remember which headquarters issued those orders? A. I assume the Army Air Corps.

Q. And after that you were commissioned again in the National Guard of the State of West Virginia? A. I was commissioned in the Officers Reserve Corps subsequent to my separation from service, active service, Army Air Corps, in, I believe December 1945, and then later commissioned in the Army Guard, Army National Guard of West Virginia.

Q. That is the National Guard of the State of West Virginia you are referring to? A. That is correct.

Q. In the Air National Guard? A. Army.

Q. Yes. Referring to your Reserve commission which you mentioned, which you obtained in 1945, was that? A. I believe December '45, yes, sir.

338 Q. Were you discharged from that or released from it at any time subsequent thereto? A. I am not sure of the proceedings. I was commissioned without break in service to the West Virginia National Guard.

Q. Well, did you receive any orders at any time from any Headquarters relating to your status with respect to this Reserve commission which you just described? A. I would assume so.

Q. Do you have any recollection of what those orders provided? A. I do not.

Mr. Wolcott: Don't you have the records there, Mr. Pettibone?

Mr. Pettibone: No, Mr. Wolcott. These are State records, not Federal records.

Mr. Wolcott: I see.

Mr. Pettibone: And that is why I don't have it.

Mr. Wolcott: I thought you might have the Federal records on his reserve status.

Mr. Pettibone: We may have.

339 Mr. Wolcott: All right.

Mr. Pettibone: I don't know. I really did not mean to go into this service here.

Mr. Wolcott: That is all right. I thought if you had the records of that, that would help to clarify it.

Mr. Pettibone: Let us pause momentarily for a conference?

Mr. Wolcott: Surely.

Mr. Pettibone: Off the record.

(Discussion off the record.)

Q. (By Mr. Pettibone) Now, you testified previously, I believe, Captain McCopy, that you attended certain training schools, both prior to your appointment as a second lieutenant in the Maryland Air National Guard, and also subsequent thereto, is that correct? A. That is correct.

Q. And particularly you mentioned that you spent several months pursuing courses of training at Chanute Air Force Base in Illinois, is that correct? A. That is correct.

340 Mr. Mudd: Mr. Pettibone, may I make another point of inquiry regarding your Exhibit No. 1 for identification, sir.

Mr. Pettibone: Yes.

Mr. Mudd: On the bottom of the first page is the inscription, "SPECIAL HANDLING REQUIRED" IAW, paragraphs 49(a) and 52, AFR 62-14.

Mr. Pettibone: Well, that should have been crossed out, but inadvertently the photostat was made before it was crossed out.

May I request the Reporter to draw a line through that at the bottom of U. S. Exhibit No. 1?

Mr. Mudd: No, I would object to that, the point of my inquiry being, of course, that inasmuch as the apparent handling of this is in accordance with an Air Force regulation, that I would assume that any responsibility for the use of this in a public proceeding would be yours and not that of the witness.

Mr. Pettibone: That is correct. I will assume on behalf of the United States full responsibility for introducing this at this time. And no responsibility is chargeable to Captain McCoy on that account.

341 Mr. Mudd: I further note that the photostat indicates that this is a certified true copy, which was made by Captain Millard F. Hamblin, Jr., of the U. S. Air Force, who apparently at that time was Recorder of the Aircraft Accident Board.

Mr. Pettibone: Well, that is a capacity which gave him the legal power or authority under the applicable Air Force regulations to make certifications of this type.

It has nothing to do with his other duties as an Aircraft Accident Board Recorder. It just merely indicates the position he held, which under regulation gives him a certifying power.

Mr. Wolcott: Well, I join in the objection Mr. Mudd made for the record.

You have offered a certified copy, which I assume is a complete one. And if any explanations are to be offered, I understand you mean you have given them, but as far as making a physical mark on the exhibit, I would definitely object to it.

Mr. Pettibone: You mean you object to offering a certified copy?

342 Mr. Wolcott: No, I have no objection to it. I am talking about making any change in the exhibit.

Mr. Pettibone: Well, I do not propose to make any change in the exhibit in any way. No, I do not propose to

make any change in it. My remarks are merely directed to the words "SPECIAL HANDLING REQUIRED," and the other little notation right under it at the bottom of the page, but I do not propose to do more than comment on them. I do not mean to change it.

Mr. Wolcott: Well, I was going to make the suggestion, Mr. Pettibone, that if you wanted to make an explanation of that remark at the bottom, then your explanation would be made in the record, and I think that would clarify it.

Mr. Pettibone: All right.

Well, apparently the words "SPECIAL HANDLING REQUIRED" were put on there for some military reason, to comply with some Air Force regulation or military requirement, the nature of which is really unknown to me.

Mr. Wolcott: Yes.

Mr. Pettibone: I am sure it does not have any
343 relationship to our use of the document here for our purposes. Certainly there is nothing classified or confidential and that is not public information contained in the document. And so I am not just sure how it got there or why. I am sure it has nothing to do with our purposes here.

Mr. Wolcott: Well, we will assume that.

Mr. Pettibone: Yes.

Off the record, Mr. Reporter.

(Discussion off the record, after which testimony was read.)

Mr. Pettibone: All right, will the Reporter mark as United States Exhibit No. 2 for identification this document?

(Special Orders referred to marked U.S. Exhibit No. 2 for identification.)

Mr. Pettibone: Would you please hand U. S. Exhibit No. 2 to the witness?

(Paper handed to the witness.)

Q. (By Mr. Pettibone) Captain, will you examine U.S. Exhibit No. 2 for identification?

(Paper examined by witness.)

344 Q. Is United States Exhibit No. 2 for identification a copy of the orders which you received, which caused you to go to the Chanute Air Force Base, Illinois, to pursue a course of training and instruction which you described earlier in your testimony in this proceeding?

Mr. Mudd: If you remember.

Q. (By Mr. Pettibone) That is right, if you remember.

Mr. Mudd: I think you are testing the recollection of the witness.

Mr. Pettibone: Yes.

Q. (By Mr. Pettibone) I don't mean to call upon you to state more than you can remember, of course. A. U. S. Exhibit No. 2 appears to be a reproduction of Special Order No. 182, that authorized me to proceed to the Chanute Air Force Base for the reasons stated, yes.

Q. And did you pursuant to this Special Order No. 182, issued by the Military Department of the State of Maryland, proceed to Chanute Air Force Base, Illinois, on or about 18 September 1955?

Mr. Mudd: Objection. I object to the conclusion of counsel in the framing of the question.

345 Mr. Pettibone: What conclusion, may I ask, Mr. Mudd? I asked him if he proceeded pursuant to those orders.

Mr. Mudd: You said pursuant to the State of Maryland National Guard Bureau, and there are words there indicating it is by authority of the Secretary of the Air Force, in communication from the Chief of the National Guard Bureau.

Mr. Pettibone: That is true, but at the top of the exhibit it states, "Military Department, State of Maryland, Office of the Adjutant General, Fifth Regiment Armory, Baltimore, Special Order No. 182" and then follows the text of the order which says, "By order of the Governor, Milton A. Reckord, Major General, the Adjutant General."

That is why I refer to it as an order of the Air National Guard of the State of Maryland.

Mr. Mudd: Well, I think it is obvious then, from the reading of the document, and even the prior Exhibit No. 1 for identification, that these orders have been cut from orders received from other authorities and issued to Captain McCoy.

346 Mr. Pettibone: Oh, I agree. I think the document will speak for itself in that respect. But I still feel my characterization as I framed it in my question is proper.

Mr. Wolcott: Well, I join in the objection that Mr. Mudd just noted. I think it is improper for you to make your own characterization of an order that speaks for itself.

Mr. Pettibone: All right, I will withdraw the question in that manner in which I framed it before, and I will put it to the witness in the following manner:

Q. (By Mr. Pettibone) Captain McCoy, did you pursuant to the orders contained in United States Exhibit No. 2 proceed, on or about September 18, 1955, to Chanute Air Force Base, Illinois? A. I did.

Q. And while at Chanute Air Force Base, Illinois, pursuant to these orders, did you pursue a course of training to students in maintenance, known as or described as aircraft maintenance officers course? A. I did.

Q. And on the completion of that course where
347 did you go? A. I returned to Baltimore.

Q. Did you report to the Air National Guard of the State of Maryland upon your return? A. I did.

Q. Were you assigned to duty in the Air National Guard of the State of Maryland upon your return? A. That is correct.

Q. What duties were you assigned at that time? A. Aircraft maintenance officer.

Q. With what unit? A. With the 104th Fighter Squadron.

Mr. Pettibone: This is off the record.

(Discussion off the record.)

Q. (By Mr. Pettibone) Now, after you were commissioned a second lieutenant in the Maryland Air National Guard in 1952, you stated previously that from time to time you attended training courses at training schools particularly a two weeks' period during the summer, is that correct? A. That is correct.

Q. Did you attend those training schools pursuant to orders issued by some military headquarters? A. I am not familiar with the procedures necessary to direct me to this training.

Q. Well, isn't it true that when an officer such as yourself attends a training school normally written orders are cut by some Headquarters directing you to proceed to the school and take the course? A. That is the normal procedure, yes.

Q. And do you recollect whether or not such orders were cut covering your attendance at the training schools that you mentioned in your testimony? A. I assume they were, yes.

Q. Well, do you remember that they were cut? A. I don't truly remember that they were.

Q. Well, when you attended the training schools, isn't it the practice upon arrival to report to someone in pursuance to your orders? A. Are you referring now to the two weeks' summer training? Q. That is correct, yes. You testified that you went different places different summers to take training courses. A. That is correct.

Q. You recollect that? That is correct? A. That is correct.

Q. Now, when you went to those places which you have previously testified to, upon arrival at the training school or training center, did you report your arrival to anyone? A. I accompanied the entire 104th Fighter Squadron to those training sites.

Q. And do you have a recollection as to whether or not you presented any orders pertaining to you upon arrival

at any one of those training schools or centers? A. Not to my recollection.

Q. Well, do you recollect whether or not any orders on your behalf, covering perhaps the whole group of which you were a member, were so presented to anyone? A. I have no knowledge of it.

Q. Do you remember ever seeing any such orders? A. I have no recollection of seeing them.

Mr. Pettibone: Off the record.

(Discussion off the record.)

Q. (By Mr. Pettibone) Now, Captain McCoy, you
350 have also testified that during your period of service as a commissioned officer in the Air National Guard of the State of Maryland, that there were certain training requirements which you had to comply with, and also that there were various training schedules from time to time which you outlined the training that you and other commissioned officers in the unit would comply with. Do you recollect by whose authority those training schedules were issued to you and other members of your unit, or what Headquarters prepared and issued them, or by whose authority they were signed or made official? A. Is this the physical schedules of the training assemblies or the training required to be accomplished?

Q. Well, I have in mind both really, but separate the two items in your answer if you wish. A. To the best of my belief, the local Commander established the dates of the training assemblies.

Q. By the local Commander, do you mean the local Commander of your specific unit? In this case that would be Colonel Kilkowski? A. I believe at this time Major Scott.

351 Q. At this time Major Scott, but formerly Colonel Kilkowski? A. Formerly Colonel Kilkowski.

Q. And were those training schedules prepared on a written form and published, or maybe put up on the bulletin

board, or something like that? A. They were prepared in advance of the training assemblies, yes.

Q. About how long a period would be covered usually by training schedules of this type? A. I believe they are published for a six months period.

Q. Would the training schedule call for meetings or assemblies of members, of the commissioned officers, members of the unit? A. They would require the entire membership of the unit, both enlisted and commissioned, to perform their particular functions.

Q. About how often would the meetings take place? A. Roughly twice a month.

Q. Did you ever see any training schedules of this
352 type that were issued by anyone other than your unit commander? A. Not to my knowledge.

Q. Now, you testified previously that there was, in addition to the other National Guard Officers assigned to your unit, there was also a liaison officer, I think was the term used, usually an officer of the United States Air Force, is that correct? A. I believe his job description in this particular location is Air Advisor.

Q. I see. You had one commissioned officer then who was a commissioned officer in the United States Air Force, who was attached to your unit as an Air Advisor, filling this position, is that correct? A. That is correct.

Q. At the time of your commission and assignment to this unit, to the 104th Fighter Squadron, in 1952 until May 20, 1958, can you remember the names of the various officers who held this position of Air Advisor? And give the date approximately of each one, when they were in the unit, and I realize that this calls upon your memory
and you may not be exact, but I don't mean to be
353 exact, but just approximately as you can recollect.

A. In 1952?

Q. Yes. A. When I joined the unit, Lieutenant Colonel Van Ausdell—V-a-n A-u-s-d-e-l-l—and I believe in 1953

Lieutenant Colonel Dow—D-o-w—and I believe again in 1957 he was replaced by Major Britton—B-r-i-t-t-o-n.

Mr. Wolcott: What was his full name?

The Witness: Major Britton?

Mr. Wolcott: Yes.

The Witness: Milton D. Britton.

Q. (By Mr. Pettibone) Now, as a military officer yourself, you are familiar, I assume, with the expression commonly used in the Air Force and the Air National Guard and other military installations, called command authority, is that correct? A. I am, yes.

Q. Would any of these officers whom you have just named, who were attached to your unit as Air Advisor, in your opinion have command authority at any time over you as a commissioned officer in that unit?

354 Mr. Mudd: Just a minute. Objection. The question calls for a conclusion of law—

Mr. Pettibone: It calls for his opinion.

Mr. Mudd: —by the witness, or, as the question said, his opinion. I therefore object to it.

I do not instruct this witness not to answer, however.

Mr. Wolcott: Well, I want to join in the objection, and on the further ground that the witness has not stated what he understands the term command authority to be, and I think he should be first asked that in any event.

Mr. Pettibone: I think your point is well taken, Mr. Wolcott, very well taken.

Q. (By Mr. Pettibone) Captain McCoy, what is your understanding of the meaning of the term command responsibility in the military establishment?

Mr. Wolcott: Did you say authority or responsibility? Are you using the term command responsibility or command authority?

Mr. Pettibone: Command authority. Command authority. If I said responsibility, Mr. Reporter,
355 please correct my statement. It should be command authority.

Q. (By Mr. Pettibone) Could you tell us what that means, Captain McCoy? A. There are established command lines in my opinion that emanate from the president right on down, right through the lowest officer, in a chain or in an organization of a particular type.

Mr. Wolcott: You are talking about the President of the United States?

The Witness: That is correct, sir.

Mr. Wolcott: Yes.

Well, I still don't understand what is meant by it.

Mr. Mudd: Well, perhaps not what the witness has said what he understands by it.

Mr. Wolcott: Well, okay. It certainly left me in the dark.

Mr. Pettibone: I will be glad to furnish you with the Air Force publication, if there is one, I don't know that there is one.

Mr. Wolcott: Does that mean a chain of command, 356 may I ask?

Mr. Pettibone: Is this off the record now?

Mr. Wolcott: Yes.

(Discussion off the record.)

Q. (By Mr. Pettibone) Captain McCoy, did you ever individually receive any direct orders from any of the officers whom you have just mentioned, who filled the position of Air Advisor with your unit? A. None other than to respect the rank and the military position of a superior, to my knowledge.

Q. Now, you have testified previously in this proceeding that part of your duties with the 104th Fighter Squadron was to perform what you called check-outs on planes and instruments assigned to the unit.

What is embraced in the term check-out as you used it in that connection? A. The term I believe was flight check.

Q. All right. A. I might be corrected on that.

357 Q. All right. A. And the objective was to evaluate the equipment for its fitness for flight or for its air readiness in the case of instruments or radio

equipment and to monitor the quality of maintenance performed at the installation.

Q. Did that sometimes involve your actually flying the equipment? A. It did.

Q. As pilot? A. That is correct.

Q. Now, when you performed such duties involving the flying of equipment for this purpose, was that done pursuant to someone's orders, some superior's orders? A. It is desirable that an aircraft maintenance officer be able to perform this duty, and I believe that can be found in the appropriate manuals.

Q. Yes, I realize that, but when you actually did perform the duty, was it performed pursuant to orders of anyone? A. In all cases flight orders were issued to perform these duties.

Q. Yes, and by whose authority, or in whose name
358 were the flight orders in those instances issued? A.

The authority to operate the aircraft was issued by the Department of Air Force.

Q. I am referring now to flight orders to make a specific flight for the purpose which you have just described. Were those orders issued by the Department of Air Force? A.

I assume the overall authority to operate the aircraft—

Q. No, I am not referring to that, but—

Mr. Wolcott: Please let the witness answer. You are interrupting the witness.

Mr. Pettibone: All right. I did not wish to interrupt him.

Mr. Wolcott: Now, clear up his answer. Let him finish his answer.

Q. (By Mr. Pettibone) Go ahead, state your answer. A. And in that connection, authority specifically delegated to the local Commander, who in turn issued the specific order to perform a specific flight.

Q. All right, now, we are referring—

Mr. Wolcott: Would you read that answer back? It does not sound very complete.

359 (Answer read by Reporter.)

Q. (By Mr. Pettibone) Where the specific orders for the specific flight—

Mr. Mudd: I think we would all agree that there was some part of his statement or answer that was left out.

Mr. Wolcott: That is right, because he started to say by authority—

Mr. Mudd: It is my understanding that he said they originally came down from the Air Force and they went to the local Commander.

Mr. Wolcott: That is the part that was left out.

Mr. Mudd: I wonder if we could clarify that on the record, Mr. McDonald?

(Testimony read by the Reporter.)

Mr. Mudd: Do you wish to add anything? You said, "I assume the overall authority", and then there was an interruption by Mr. Pettibone, and if Mr. Pettibone has no objection to letting him give his full answer.

Mr. Pettibone: Yes, let us supply the missing part, and I think he will probably be able to supply that, and then take up the rest of that.

360 The Witness: With the interruptions that have been in there, I am losing words.

Can I just make the whole answer over again?

Mr. Mudd: Go ahead.

Mr. Pettibone: Go ahead.

Mr. Wolcott: Go ahead.

The Witness: I assume that the overall authority to operate the aircraft is issued by the Department of Air Force, and then authority is subsequently delegated to the local Commanders to issue orders for a specific flight.

Q. (By Mr. Pettibone) Were the specific orders for the specific flight that you have described issued in each in-

stance by the Commander of your local unit, that is, the 104th Fights Squadron? A. To the best of my ability.

Q. You mean to the best of your recollection? A. To the best of my belief. I don't recall it.

Q. Yes. Yes. That would in other words be the base detachment Commander of your unit, either Colonel Kilkowski or Major Britton, or Major Scott, excuse me. A. I believe this would be the Squadron Commander rather than the base detachment Commander.

Q. I see. And who would that be? Can you recollect the name of the Squadron Commander who issued those orders? A. Any particular year or flight?

Q. Oh, let us take the year 1958? A. Colonel Kilkowski was Squadron Commander at that time. I assume he would issue the orders.

Q. Were the other officers, the other Squadron officers who would issue such orders, also commissioned officers in the Air National Guard, assigned to your unit? A. Yes, sir.

Mr. Mudd: Objection, on the ground of materiality.

Go ahead and answer the question if you know.

A. I assume that they are in the Air National Guard, yes, sir.

Q. (By Mr. Pettibone) Now, in your previous testimony you have mentioned the fact that you were from time to time given check flights to test your flying proficiency.

In general, what is the nature of such a flight, and in general how is it conducted, just briefly? A. Certain individuals are assigned the duty annually to check the proficiency of the pilots of the unit and the standardization between the pilots with the unit, and they are given a flight check, the pilots are given a flight check by these individuals.

Q. Well, exactly what does that involve? Does that involve making a flight in a plane accompanied by the person giving the test? A. That is correct.

Q. Did you actually make such flights for such test purposes? A. I did.

Q. Since the time of your commissioning in 1952, about how many such flights did you make for test purposes?
A. I don't recall.

Q. Well, about how often do you make these flights? Is it once a year or more frequently or less frequently than that? A. I believe it is annually.

Q. Were the individuals who gave you these tests members of the unit to which you were assigned? A. Probably.

363 Q. That is to say, were they commissioned officers assigned to the same unit as yourself? A. To the best of my recollection, yes.

Q. Do you remember the names of any of them? A. I don't at this moment.

Q. Were you ever given a check, a test flight for such checking purposes, by anyone other than a member assigned to the same unit as yourself? A. In my original answer in this line of questions I referred to the standardization for proficiency flight check.

Q. Yes. A. To my knowledge, I can't recall any member other than a member assigned or attached to the 104th Fighter Squadron that performed such a check with me.

Q. Now, Captain McCoy, in addition to being commissioned officer, a flight officer, a pilot in the 104th Fighter Squadron, you were also a civilian employee of that unit, is that correct? A. I am not quite sure what status I was.

364 Q. Well, you testified before, if I remember correctly, you said you had a dual status: You were a commissioned officer in the Air National Guard, assigned to this unit, and we have just gone over the assignment, your assignment to this unit, and your service with it from 1952 to the present time. Now I am turning to something else. You were also in addition to being a commissioned officer, you were also a civilian employee for a particular purpose, which we will go into in a moment, in the unit, is that correct?

Mr. Mudd: Go ahead and answer it if you can.

A. I cannot answer this question truthfully. I am required to wear the uniform that I presently have on during my status as an Air Technician, and I cannot truthfully answer your question.

Q. (By Mr. Pettibone) Well, aren't you aware of the fact that you were and are a civilian employee of the 104th Fighter Squadron as well as being a commissioned officer in it? A. Again, I cannot be positive as to the status.

Mr. Pettibone: Will the Reporter mark this document as United States Exhibit No. 3 for identification?

(Special Orders referred to marked U. S. Exhibit 3 for identification.)

365 Mr. Pettibone: I would like to ask the witness to look at Exhibit No. 3 for identification.

(Paper handed to and examined by witness.)

Mr. Wolcott: May I ask you on the record, Mr. Pettibone, what PAC means?

Mr. Mudd: Similar to authority contained in—

Mr. Wolcott: What does ANGR mean?

Mr. Mudd: National Guard Regulations.

Mr. Pettibone: In case you have any question as to the extract, the part excluded does not pertain to the witness or having anything to do with this matter that we are dealing with here.

Mr. Wolcott: Yes.

Mr. Pettibone: But I will be glad to give you the whole order.

Mr. Wolcott: Well, I assume the same comment applies to all of these.

Mr. Pettibone: Yes, that is right.

Mr. Wolcott: May I ask you on the record, Mr. Pettibone, what assistant U. S. P. & F. O. means?

Mr. Pettibone: It is an abbreviation for United
366 States Property & Fiscal Officer.

Mr. Wolcott: I see.

Mr. Pettibone: As I am informed by competent Air Force authority,

Mr. Mudd: And put that in capitals, Mr. McDonald. Let the record show he is referring to Major Prince.

Q. (By Mr. Pettibone) Captain McCoy, referring to United States Exhibit No. 3 for identification, have you seen this document before at any time? I don't mean this specific one. I mean the original of which this is a copy or another copy of it. A. I have.

Q. In the second line of United States Exhibit No. 3 you will see the term, "Air National Guard Civilian Personnel Program". Do you know what that means or what it refers to? A. I assume that it has reference to some portion of the Air National Guard Regulation 40-01.

Q. Do you know whether or not it provides a program or procedure for the employment of civilian personnel by the National Guard?

Mr. Mudd: Objected to.

367 Mr. Wolcott: All right, objected to.

Are you referring to the personal knowledge of the witness?

Mr. Pettibone: Yes, I am asking him whether he knows.

Mr. Kieffer: Just a minute. For the record I would like to have it stated, although formal objections are waived, I wish to concur in all objections previously made and subsequently made that I did not individually object to.

And that goes on behalf of Mr. Galiher and his clients, and Mr. Davidson and his clients.

Mr. Pettibone: Well, I am sorry, Mr. Kieffer, but I could not agree to let a statement of that kind pass without comment.

If you have an objection on form, in accordance with our procedure here, you will have to make your objection, the same as the rest of us have. I could not agree to any other procedure.

Mr. Kieffer: Well, I believe this is a general discovery deposition, and under the Rules, of course, no objections are waived at the trial.

368 Do you prefer from now on that I concur in all objections made with Mr. Wolcott?

Mr. Pettibone: At the beginning of this deposition of the witness, you were not present at that time, I believe, but it was agreed that any objection as to form would be made here and now during the taking of the deposition of the witness, and that was the basis upon which we agreed that we would conduct this deposition. At least that is my understanding of it. And there are other people here who can concur in that. So in accordance with that, so far as I am concerned, I cannot make any exception to what was to be the procedure, and objections as to form have to be made here and now.

Mr. Kieffer: At this time I wish to concur in the objection which is made.

Q. (By Mr. Pettibone) Will you answer the question?

Mr. Wolcott: What is the question?

(Question read by the Reporter.)

Mr. Wolcott: Are you objecting, Mr. Mudd?

Mr. Mudd: Well, I made the original objection.

Mr. Wolcott: Yes.

369 Mr. Mudd: Of course, obviously this is a long way from the best evidence, but if you are testing his knowledge of the regulation, I will let him answer. Of course, what he says or what he understands does not necessarily prove what the program provides.

Mr. Pettibone: Well, we all realize that a lot of the things that he testified to here thus far have not always been the best evidence on the point.

Mr. Mudd: No, but presumably on some of these technical regulations, it may not be correct. The point I am making is that to test this witness on the contents of various regulations is extending the record really without any authoritative source, you might say.

Mr. Pettibone: If I have been very technical, I would certainly have to agree with you, but I really only asked

him very broad general matters. Now, maybe I am in error, but I assume that matters in the general knowledge of a commissioned officer with his rank in the Air National Guard would be admissible.

I am trying very hard not to be very technical about the regulations, and naturally they will speak for themselves anyhow.

Mr. Mudd: That is right, that is right.

Mr. Pettibone: I am asking him in a general way if he is familiar with the general civilian employment program of the National Guard.

Q. (By Mr. Pettibone) Now, will you please answer the question? A. I know that Air National Guard Regulation 40-01 provides certain information and certain requirements for the Air Technician Program. As to the status of the individual, again I am not positive.

Q. Well, you testified previously that you took a course of instruction at the Chanute Air Force Base back in 1955 and 1956, a course of training for aircraft maintenance personnel.

Now, upon the completion of that course you stated that you returned to your unit here in the Baltimore area. Were you given any duties in connection with aircraft maintenance upon your return to your unit at that time? A. As I stated, I was assigned the duties of an aircraft maintenance officer.

371 Q. And how were you paid for those duties? A.

I was paid at the rate of pay commensurate with the rank of aircraft maintenance officer in the Maryland Air National Guard.

Q. What was your title? A. Aircraft maintenance officer.

Q. Now, I am referring to 1956. Well, what was the date when you first took over these duties as an officer in aircraft maintenance? It was in 1956, was it not? A. 1956, yes.

Q. Do you remember the exact date? A. I do not.

Q. The month? A. June, I believe.

Q. All right, in June of 1956. What was your title at

that time? A. I was aircraft maintenance officer of the 104th Fighter Squadron, Maryland Air National Guard.

Q. Did you have any other title? A. In the Air National Guard?

Q. In the 104th Fighter Squadron, your unit.

372 Mr. Mudd: You mean other than rank, I presume.

Mr. Pettibone: That is correct.

Mr. Mudd: Do you mind if he consults with me?

Mr. Pettibone: No, go ahead.

(Mr. Mudd and witness in conference.)

A. I was base maintenance supervisor for the 104th Fighter Squadron as an Air Technician.

Q. (By Mr. Pettibone) Is that a capacity other than your capacity as a commissioned officer in the Air National Guard at that time? A. I believe that the Regulation requires that the base maintenance supervisor be a commissioned officer in the Air National Guard. That is my belief.

Q. What Regulation? What are you referring to? A. ANGR 40-01.

Q. Yes, that is true, but let me go back to my question now, because my question was a little different than that.

Is that status or position different from and in addition to let me say being a commissioned officer in the Air National Guard? I understand that you have to be a

375 commissioned officer to hold this position, but what

I am getting at is, is this a different position? A. I think I have stated that, Mr. Pettibone.

Q. No, you have not, not yet. A. I was an aircraft maintenance officer in the Air National Guard and held the job title in addition as Base Maintenance Supervisor, and to perform these duties, or to have this job description, I had to be a commissioned officer in the Air National Guard. If they are separate, I don't know.

Q. Did you receive separate pay in each of these capacities? A. I did.

Q. From a different source? A. I think both pay checks were drawn on the Treasury of the United States.

Q. Were you paid at the same time or different times? A. Not necessarily at the same time.

Q. Referring to United States Exhibit No. 3 for identification, in the sixth line under the words "Base Maintenance Supervisor"—the word maintenance being
374 abbreviated as Maint, there appear the letters NGC-11. Do you see those? A. I do.

Q. Do you know what they stand for, or what they represent, or what they mean, or what they refer to? A. I believe that is a rating issued by the National Guard Bureau for Air Technician Manning purposes.

Q. And following those letters and numbers, you see further letters, S-2 and then eff, followed by a date, 16 December '57, also abbreviated. Do you know what that stands for, refers to our means, and if so, tell us. A. I believe that refers to the step, in this case Step 2, and the effective date that I attained that step.

Q. All right. Prior to May 13, 1958, then, you were a base maintenance supervisor in the 104th Fighter Squadron, as indicated herein, is that correct? A. That is correct.

Q. And then to the right of Base Maintenance Supervisor you see the term Aircraft Maintenance Chief, the word Aircraft being abbreviated, Acft. Is that another technician's position to which you were transferred on
May 13, 1959?

375 Mr. Wolcott: '58.

Mr. Pettibone: 1958, excuse me.

The Witness: 16 May '58.

Mr. Mudd: I think it says effective May 16th.

Mr. Pettibone: Yes, you are correct. The order appears to be dated May 30th, but the effective date is May 16, by its own terms.

The Witness: That is correct.

Q. (By Mr. Pettibone) Now, tell us just briefly the general nature of your duties as air technician during the pe-

ried you were employed as base maintenance supervisor. A. I had overall supervision of vehicles, crash equipment, ground support equipment in the various shops and other support areas of aircraft maintenance and the responsibility for aircraft maintenance.

Q. All right. Then after your transfer to the position of aircraft maintenance chief on 16 May 1958, did you thereafter have different duties as air technician? A. I had fewer duties. I relinquished certain areas to another individual.

Q. Just describe briefly in a general way your
376 duties as air technical after you became aircraft maintenance chief? A. I was concerned with aircraft maintenance and limited support for it as opposed to the overall base maintenance supervision prior to that date.

Q. Did you enter upon and perform duties of that position commencing on May 16, 1958? A. I did.

Q. Does that position require you to be a commissioned officer in the Air National Guard? A. To the best of my belief the Regulation says commissioned officer, warrant officer or—I don't recall if it is civilian or master sergeant. Maybe both.

Q. Did the change of position on May 16, 1958, which you just described, involve an increase in pay or salary for you? A. I believe the salary was the same or slightly more.

Q. Who was your immediate supervisor in your capacity as aircraft maintenance chief? A. Major Jesse D. Mitchell.

Q. What was the nature or extent of his supervi-
377 sion of your work? A. He assumed the duties of base maintenance supervisor.

Q. Is that the position which you had held previous to that time? A. That is correct.

Q. You mean the person who assumed your old position became your supervisor in your new position? A. That is correct.

Would you repeat the question again, please?

Mr. Pettibone: May I ask the Reporter to read it to you?

(Testimony read by Reporter.)

A. Yes.

Q. (By Mr. Pettibone) Referring to the United States Exhibit 3, in the seventh line of the test of this order, underneath the term aircraft maintenance chief, I see the letters NCMS-9. Do you know what those letters and number mean or refer to? A. The letters to the best of my belief and the related number designate a rate in 378 the air technician's manning document.

Mr. Wolcott: In what document?

The Witness: In the air technician manning document.

Q. (By Mr. Pettibone) What does the S-3 mean following it? A. That would indicate the step in the rate.

Q. And the letters eff I take it mean effective date of your entering into this position? A. That is right.

Q. May 16, 1958, is that correct? A. That is correct.

Q. Were you notified by anyone on or before May 16, 1958 that you were going to be transferred from the position of base maintenance supervisor to that of aircraft maintenance chief? A. I was.

Q. By whom? A. I believe Colonel Kilkowski.

Q. Do you recollect who notified you before your appointment as base maintenance supervisor? Who 379 informed you that you would be appointed to that position? A. Major Scott.

Q. That would be back in 1956? A. 1955.

Q. Did you apply to Major Scott for that position, either verbally or in writing? A. Yes.

Q. Did he discuss your qualifications for the position with you? A. He did.

Q. Did you inquire as to the rate of pay for the position? A. Very possibly.

Q. Did you discuss with him the general nature of the work and the nature of your duties? A. Probably.

Q. Were you at the time you first entered upon the position as base maintenance supervisor already assigned to the 104th Fighter Squadron as a commission officer? A. I was.

Q. How long had you been so assigned to it, sir?
380 A. Since January of 1952.

Q. And when you were transferred to the position of aircraft maintenance chief, on the effective date of May 16, 1958, did you request this transfer? A. I requested the new position, yes.

Q. To whom did you make the request? A. Colonel Kilowski.

Q. Did you discuss with him what your duties would be in the position of aircraft maintenance chief? A. I did.

Q. Did you see any written description of your duties as aircraft maintenance chief? A. Very probably, yes, sir.

Q. Was that on the occasion when you discussed your transfer to this position with Colonel Kilowski? A. I don't recall the exact date.

Q. Approximately at that time, though? A. Approximately at that time, yes.

Q. Do you have a copy of that description of your duty as aircraft maintenance chief at the present time? A. There is a copy on file at the 104th Fighter
381 Squadron.

Q. You have read it, have you? A. I have.

Q. Had you read it on or before May 20, 1958? A. I had.

Q. Let me rephrase my question.

Had you read it before May 20, 1958? A. I had.

Q. Was there a written description of your duties as base maintenance supervisor on file at the Headquarters of your Squadron before May 20, 1958, at your old job? A. There was a copy on file.

Mr. Wolcott: Will you identify the document, Mr. Pettibone, instead of getting a description of it?

Mr. Pettibone: I will do that.

Q. (By Mr. Pettibone) Had you read it? A. I had.

Mr. Pettibone: Will the Reporter mark this, please, as United States Exhibit No. 4 for identification?

(Outline of duties of Aircraft Maintenance Chief referred to marked U. S. Exhibit No. 4 for identification.)

382 Mr. Wolcott: What is this up at the top there, Mr. Pettibone?

Mr. Pettibone: Is this off the record?

Mr. Wolcott: Yes.

(Discussion off the record.)

Q. (By Mr. Pettibone): Referring to United States Exhibit No. 4 for identification, do you know what this document is, Captain McCoy? A. I do.

Q. Can you tell us what it is, or what it is a copy of? A. It is a job description of aircraft maintenance chief, and it is an extract of the Air National Guard Manual, 40-01.

Mr. Wolcott: Well, isn't there an overall title, Civilian Personnel Manual?

Mr. Pettibone: You have it there.

Mr. Wolcott: I mean is this where this comes from, the Civilian Personnel Manual?

Mr. Pettibone: That is right.

Mr. Wolcott: All right.

383 Q. (By Mr. Pettibone) Is this document which we have identified as United States Exhibit No. 4 for identification the same as the description of your duties as aircraft maintenance chief on file with your unit that you just referred to in your testimony? A. This is the document I have reference to.

Q. This is a copy of the same document, is that what you mean? A. That is right.

Q. And does it describe the duties which you began performing on May 16, 1958? A. Let me state at this time that Major Mitchell had not returned from the aircraft maintenance school, and I was still acting as his subordi-

nate or second in command, performing those functions of the overall base maintenance supervision in addition to those listed in the manual.

Q. You mean you held two positions on May 16, 1950?

A. As Major Mitchell's second in command I was responsible for overseeing certain functions that he would normally oversee had he been present.

Q. All right. And when did he return to the unit?

384 A. In November of 1958.

Q. So that during that period of time from—was it May 16th until November of '58, in his absence you had been looking after his duties as well as your own, is that what you mean? A. I had the responsibility for certain areas for this aircraft maintenance care.

Q. And then after he returned in November of 1958, you performed only the duties described generally in United States Exhibit No. 4; those prescribed for aircraft maintenance chief? A. That is correct.

Q. Do you recollect whether you performed any specific duties other than those described in United States Exhibit No. 4 on May 20, 1958? A. Other than these?

Q. Other than these listed in Exhibit 4 for identification. A. As Air Technician?

Q. That is right. A. I have no knowledge of any
385 specific duties. It is there possibly.

Q. I am referring now, of course, to your duties as Air Technician. A. That is correct.

Q. And those duties specifically described in Exhibit 4, for aircraft maintenance chief, and I am referring specifically to May 20, 1958.

Perhaps you answered this already, and if so, forgive me, but maybe I am a little confused, and I would like to get it straight. What I mean, did you perform any duties other than those referred to on that day as far as you remember?

Mr. Wolcott: I object to that in form. It is too broad, and it calls for a conclusion on the part of the witness, and a conclusion of law.

Mr. Pettibone: Well, I will be glad to try to reform the question so that it will be admissible.

Specify the part which you object to.

Mr. Wolcott: Well, I have stated my objection.

Mr. Pettibone: Well, I am afraid I do not understand it then. Could you make it more specific?

386 Mr. Wolcott: I think my objection stands on the record, and I don't feel it is necessary to add to it.

Mr. Pettibone: Well, all right, let the Reporter please read to me from the record the statement of the objection made by Mr. Wolcott.

(Statement referred to then read by Reporter.)

Mr. Wolcott: I think you ought to be specific.

Mr. Pettibone: I will withdraw the question and rephrase it as follows.

Q. (By Mr. Pettibone) Referring to United States Exhibit No. 4 for identification, in your capacity as Air Technician did you perform any duties on May 20, 1958 in addition to or other than those listed therein?

Mr. Wolcott: Objection. Whatever he performed cannot be characterized. You can ask him what he did. Now you are asking him to characterize it.

Q. (By Mr. Pettibone) All right, subject to that change, instead of saying what duties did you perform, did you do anything then other than the activities listed in this exhibit?

Mr. Wolcott: I make the same objection, on the
387 same grounds.

Q. (By Mr. Pettibone) All right, answer it.

Mr. Buckmaster: He stated he performed other duties.

Mr. Wolcott: He stated that he performed other duties.

Mr. Buckmaster: As supervisor.

Mr. Wolcott: I am sorry, I did not hear it.

I would like the witness to answer it.

The Witness: My answer was very possibly I performed other duties.

Mr. Wolcott: That is correct.

The Witness: I don't recall specifically any duties.

Mr. Wolcott: That is what he said.

Q. (By Mr. Pettibone) Prior to May 16, 1958, while you were base maintenance supervisor, who was your immediate superior, to whom you were responsible for the performance of your duties? A. Colonel Kilkowski.

Q. And on and after May 16, 1958, when you became aircraft maintenance chief, who initially was your superior, to whom you were responsible for the performance of your duties? A. Major Mitchell held the job as base maintenance supervisor. However, in his absence Colonel Kilkowski was my immediate supervisor.

Q. That would be from the period of May 16th to November of 1958? A. That is correct.

Q. And then is it correct that in November, when Major Mitchell returned to the unit, he became your immediate supervisor? A. That is correct.

Q. How many hours were you required to work per week in your capacity as aircraft maintenance chief? A. I can best answer that by saying that to the best of my belief a normal work week was a forty hour week.

Q. Did you actually work forty hours per week? A. To the best of my belief, yes.

Mr. Wolcott: Excuse me but—

Q. (By Mr. Pettibone) Were time records kept of how many hours you worked per week? A. I assume so.

Mr. Wolcott: Excuse me, but may I inquire—
Off the record.

(Discussion off the record.)

(Thereupon, at 12:30 o'clock p.m., a recess was taken until 1:30 o'clock p.m.)

AFTER RECESS

Q. (By Mr. Pettibone) Now, referring to your activity, first as base maintenance supervisor, and then subsequently as aircraft maintenance chief, you testified I believe just before the recess that you worked forty hours a week. What time did you normally start to work in the morning?

A. Well, the normal work week hours from 8:30—or, excuse me, 8 o'clock in the morning to 4:30 in the afternoon, Tuesday through Saturday.

Q. Did you check in with anyone when you reported for work in the morning normally? Did you have a time
390 clock? What system was there if any? A. We have a roll-call type of system rather than time clock, whereby your attendance is recorded on a roster.

Q. You mean someone who called the roll or read the roster every morning? A. This is true in the case of everyone except the officers.

Q. Well, I am referring to other than air technicians or other civilian employees of the unit. What system was maintained of keeping records of their working hours? A. That is an overall administrative function that I am not qualified to go into too deeply. However, the employees, with the exception of those people who wore an officer's uniform, were required to attend the roll call.

Q. Well, about how many people in those air technician jobs wore officers' uniforms in say May of 1958? A. Approximately seven.

Q. And about how many others were there who were not officers, who did not wear the officer's uniform? A. Approximately 120.

Q. Were you the only aircraft maintenance chief? A. That is correct.

391 Q. Were you the only base maintenance supervisor prior to May 16, 1958? A. That is correct.

Q. Approximately how many people would you supervise while you were base maintenance supervisor? A. Approximately 80 people.

Q. And about how many did you supervise after you became aircraft maintenance chief? A. Approximately 40. These are all approximations.

Q. I understand, yes. A. This is after I assumed the duties of aircraft maintenance chief, when Major Mitchell had joined our staff.

Q. If you were not present for duty or actually on duty in your capacity as aircraft maintenance chief, or before that as base maintenance supervisor, at any time between 8:30—and did you say 5 o'clock? A. 8 to 4:30.

Q. 8 to 4:30. Excuse me. A. Between 8 and 4:30.

Q. Between 8 and 4:30, on the work days Tuesday through Saturday inclusive, did you have to report
392 your absence to anyone? A. In the interest of good management, our absence was reported, yes, to a superior and to a subordinate.

Q. Well, suppose you were sick some morning—were you ever sick and for that reason did not go down to work in the morning? A. Yes.

Q. That has happened? A. That has happened.

Q. And what would you do in those cases? Call up and tell anyone? A. That is right.

Q. Who would you call? A. Two people: The Commander and the person responsible for making the appropriate entries in the attendance form.

Q. Now, were you entitled to a certain amount of sick leave under certain conditions? A. That is correct.

Q. Do you know how much sick leave you were entitled to per year, or per week, or however it was, what-
393 ever the system was? Tell us what it was. A. I believe at that time it was accrued at the rate of 120 hours of sick leave per year.

Q. By that time, you are referring to 1958? A. May 1958, or at the time I took over the duties of aircraft maintenance.

Q. It was measured in terms of hours, is that correct? A. That is correct.

Q. And were the hours credited if you were entitled to cumulative pay over a period of time? A. They were.

Q. Now, if you were absent for other reasons other than sickness, if you wanted to just have some absence to do something of a personal nature, were you entitled to take a certain amount of leave for that purpose? A. We were.

Q. Do you remember how much or what the system was on that? A. I believe that accrued at the same rate, 120 hours a year.

Q. And if you wanted to have such leave, did you
394 apply for it in advance? A. That is normal procedure, yes.

Q. To the same people that you notified in cases of sickness? A. That is correct.

Q. Who are these people, by the way? A. That would be the Commander and——

Q. You mean the Base Detachment Commander? A. The Base Detachment Commander.

Q. Yes. And the other one—— A. ——would be the administrative clerk who would be responsible for maintaining the records.

Q. You mean the administrative clerk who kept the time and attendance records? A. That is correct.

Q. Was your pay based upon those time and attendance records, do you know? I am talking about your pay now, and I am speaking about the base supervisor, or, rather, aircraft maintenance supervisor. A. It is my understanding, yes, it was based on the number of hours that you were in attendance or legally absent.

395 Q. All right, if you exceed the number of hours authorized for sick leave, or for vacation, or annual leave, whatever the exact term would be, if you exceeded the number of allocated number of hours, did you suffer a reduction in pay? A. I understand you would.

Q. I take it that never happened in your case, though. A. Not to my knowledge.

Q. All right. Now, were there any other kinds of leave that you were authorized to use besides the two that I

have already mentioned? A. Your authorized leaves were attendance at the summer encampment, summer training.

Q. That would be for those two weeks, the normal two weeks period that you mentioned before in your testimony?

A. That is right.

Q. What kind of leave would that be called- I take it that is apart from those other two as we have talked about, annual leave and sick leave. A. That is correct.

Q. Would that be perhaps called military duty or
396 something like that? A. I suppose that is the general term of it.

Q. Anyhow, the hours of leave which were used in that manner were separate and apart from leaves which you used in those other categories? A. To my understanding, yes.

Q. That applied when you went to summer training periods. Did it apply to any other time? Were there any other training periods for example than this summer encampment that you have referred to where that kind of leave could be taken from your civilian or from your employment as aircraft maintenance chief? A. Only for special reasons. I know of no set policy.

Q. Now, during the course of a year, in addition to these two weeks summer training periods, you also had other training periods, didn't you, that lasted for maybe a couple of hours at a time, some kind of weekly meeting, perhaps, something like that? A. We had our training assemblies, that generally lasted the entire day.

Q. That was training in connection with your
397 status as Captain, or before that as a Lieutenant in the Air National Guard? Would that be the nature of that training? A. That is correct.

Q. And would you say these periods would last all day when you had them? A. That is correct.

Q. About what time would they start in the morning?

A. The general training assembly started at nine o'clock in the morning.

Q. Yes. And how often approximately did you attend these, say during the year 1958? A. Roughly twice a month.

Q. And on what days of the week would they normally come? A. They were on Saturdays.

Q. Would you take leave from your job as Aircraft Maintenance Chief or Base Maintenance Supervisor in any form to attend those sessions? A. Not necessarily.

Q. Well, you mean you were present for duty in your capacity as Base Maintenance Supervisor or Aircraft Maintenance Chief on those Saturdays? A. No, sir.

Q. You were not? Well, how were you carried on the records? A. I stated that normally our work week is Tuesday through Saturday.

Q. Yes. Well, Saturday is a work day then normally? A. Normally.

Q. And then those meetings I understood came on Saturday? A. That is right.

Q. Now, how were you carried on the time and attendance records as respects your job as aircraft maintenance chief? A. I say again the normal work week is Tuesday through Saturday. However, where a general assembly interfered with a normal work week, then as air technician you could compensate your air technician status by working another day, Sunday or Monday, or possibly on a night duty of some kind.

Q. Oh, I see. In other words, you ended up in any given week as spending actually forty hours on your air technician's job? A. That is correct.

Q. And if your training period happened to come in a normal work week, you worked some other day? A. That is correct.

Q. Now, in other words, any time that you spent in training as distinguished from working at your air technician's job, that was made up that week, or at least in and around that time, by working at other times, so that your total

time spent working at your air technician's job averaged out forty hours a week? A. That is correct.

Q. Now, part of your training duties and requirements in your capacity as a Captain in the unit, and before that as a lieutenant, were used in making training flights, is that correct? A. I had a commitment to fill the training criteria.

Q. Let me put it this way: You did from time to time make training flights? A. That is correct.

Q. And in which you took an airplane and piloted
400 it to some place for a period of time. Did you ever make any of those flights during the normal working hours you have mentioned in connection with your air technician's job, that is to say, between eight and four-thirty, Tuesday to Saturday? A. I did.

Q. And did you do that frequently or infrequently or about how often would you say? Let us take the year 1958. A. I don't know how often this could be determined.

Q. Well, I realize that, but in a general way, would you say once every, oh, say once every month, or more often or less days than that? A. More often.

Q. Once a week perhaps? A. Perhaps.

Q. And what was the average?

Mr. Wolcott: Wouldn't the flight records show that?

Mr. Pettibone: Yes.

Mr. Wolcott: I am sorry.

Q. (By Mr. Pettibone) About how long—if those flights
401 had an average length or duration, about how long would that be? Would you normally make a flight for an hour, or several hours, or perhaps you can't say.

Mr. Wolcott: I object to the form of the question.

Mr. Pettibone: Let me reframe it. I will withdraw it.

Q. (By Mr. Pettibone) Now, what was the average length of time or duration of those flights? A. I would assume the training flights were generally from an hour to an hour and a half in duration.

Q. When you would make such flights during a normal day's working hours, for an air technician such as yourself, did you make up that time at some other time during the week, the same as you did with the other training? A. Not necessarily.

Q. How were you carried on the roster during that period as to time and attendance in your air technician's capacity or employment? A. Present.

Q. Well, did you sometimes make up the time consumed in the training flights by working extra hours that week?

Mr. Wolcott: I object to that. It has already
402 been answered.

Mr. Pettibone: No, he said sometimes, and I want to know what it is.

The Witness: I said not necessarily.

Q. (By Mr. Pettibone) Well, that is not an answer to the question, really. That is not an answer at all. And I would like to have the answer to it.

Mr. Wolcott: I object to you arguing with the witness.

Mr. Mudd: Let us retrench now. What is the question? Did he ever make up the time that he spent in flying away from his air technician's weekly and hourly requirements?

Mr. Pettibone: Yes.

Mr. Mudd: All right.

Can you answer that, please?

A. Well, I am not aware that that requirement existed

Mr. Mudd: All right.

Mr. Wolcott: All right.

Q. (By Mr. Pettibone) I am sorry, but that still
403 is not an answer to my question.

Mr. Wolcott: He has answered it.

Mr. Pettibone: That is not an answer to my question.

A. I don't recall. Let me answer it this way: I don't recall that specific instance where I set aside a portion of the time to compensate the air technician program for having flown. However, there may have been many times that I gave time too. I don't remember that there is any

specific instance that I can say that I deliberately set aside a portion of the time to compensate the air technician's program.

Q. (By Mr. Pettibone) Well, could you state it the other way around? Were there any times when you did compensate for your air technician's program, as you call it, by working additional hours?

Mr. Wolcott: I submit he has already answered it.

Mr. Pettibone: No, he has not answered this question.

Mr. Wolcott: Before that, he answered this particular question.

Q. (By Mr. Pettibone) Well, there is a question. 404 Will you answer it, please? A. I don't recall any particular instance that I worked any additional hours to compensate the time I may have flown during a normal working day.

Q. Well, then, in other words, you used some of these forty hours per week on your air technician's time, in some part of that time each week, or some weeks, at least, that was devoted to flying?

Mr. Mudd: Objected to. The witness has not said that, Mr. Pettibone, but he said—

Mr. Pettibone: Then I would like to have him correct me where I am wrong. That is what I am asking him, is that right or wrong.

Mr. Mudd: Just a moment. I object to the suppositions contained in your question and the inaccurate conclusions drawn from the witness' answers. He said he does not recollect. He has not said it did not happen or it did happen, but he does not recollect, and there is a major distinction there.

Mr. Wolcott: Well, just to put in my objection here, I don't quite agree with either Mr. Pettibone's or 405 Mr. Mudd's summary. As I understand it the witness has already testified that he flew a part of his training program during the hours from 8 to 4:30. He said that a number of times. And I don't think that it can

be summed up or characterized, because the record already states what he says about it.

Mr. Kieffer: I concur in that objection.

Q. (By Mr. Pettibone) Well, then, apart from any specific instances, do you have any recollection in general as to whether or not you worked extra hours to compensate for the time during normal working hours in a week you might have spent in training flights?

Mr. Kieffer: I object.

Mr. Wolcott: I object too. He has already answered it several times.

Q. (By Mr. Pettibone) Well, answer it again, anyhow.

A. The only answer I can give you, Mr. Pettibone, is that I have no recollection of compensating the air technician's program for any portion of the time that I may have used for flying, as a specific case, or as a general case.

I might make one addition to the answer.

Q. You mean you want to change your answer?

406 A. No, I don't want to change my answer, Mr. Pettibone. I would like to make an addition to the answer.

Q. All right. A. We are authorized, or as a pilot you are authorized certain flight training periods.

Q. By whom? A. By the National Guard Unit, by order of the Air Force, as I understand it, in which case you can by satisfying certain requirements, such as time spent flying and time spent in certain other functions, receive compensation, I believe to the amount of one day's pay per flight training period, and there have been cases possibly where I flew as an air technician, in air technician work, during an air technician's work day, and the time taken from that was subsequently made up to satisfy the air technician's work day and the flight training period requirements.

Q. Were you told by your counsel to give this additional information and perhaps add it to your previous answer to my question?

Mr. Mudd: Mr. Pettibone, if you had been looking at

407 this-end of the table, you would have seen him lean to me and asked me if he could make an addition to it, and I said, "Yes, go ahead and make the addition." I have had no conversation whatsoever with Captain McCoy, and I resent Mr. Pettibone's suggestion.

Mr. Pettibone: I just inquired how it happened.

Mr. Mudd: No, you did not just inquire either. And I will ask Mr. Wolcott, sitting right across the table, if my statement is not correct.

Mr. Wolcott: That was my impression.

Mr. Pettibone: Well, I don't think it serves any purpose for us to go into it.

Mr. Mudd: I should say it does not.

Q. (By Mr. Pettibone) Let me ask you this, Captain McCoy, do you receive any compensation from anyone for the time you spent in flying status, that is to say, when you performed those training flights that we are referring to?

A. There are a certain maximum number of flight training periods that a pilot can accomplish throughout a year, or a quarter, and during the training assemblies is the only compensation to my understanding you can receive for flying. However, flights may be conducted beyond
408 these periods.

Q. Well, if you fly the normal number of required hours, do you receive compensation of some kind for it?
A. Required to what extent?

Q. Well, you just mentioned certain requirements, that you had to spend so much time flying. Didn't you have to spend so many hours then in a given period, say such as a year, in order to maintain a certain status? There are requirements to that effect, are there not? A. The requirement is not to satisfy a monetary charge.

Q. No, the number of hours, I said. I did not mention monetary. A. This number of hours is specified by the regulations, and I would have to fly more hours, for me to accomplish a certain amount of flying training.

Q. All right, so you have to spend, in order to comply

with this regulation, you have to actually spend so much time flying, do you not? A. That is correct.

Q. Now, my question is this: If you spend that
409 amount of time that is required, do you receive any monetary compensation for it? A. Possibly.

Q. Well, do you happen to know? A. Possibly.

Q. Does that mean yes? A. It does not mean yes or no, Mr. Pettibone.

Q. Does it mean that you don't know? A. Mr. Pettibone, I may or may not receive compensation for flying.

Q. That is not an answer to my question.

Mr. Mudd: That is the witness' answer.

Mr. Pettibone: I want an answer to the question to the witness.

Mr. Mudd: That is the witness' answer.

Mr. Pettibone: You know it is not the answer, Mr. Mudd.

Mr. Mudd: Well, that is the witness' answer.

Mr. Pettibone: Mr. Mudd, I wish you would bear in mind that I have the right under the Rules of Civil Procedure under the Rules to stop this proceeding at this
410 point and go before a Court and request the Court to instruct the witness to answer a direct and precise question in a matter of this kind.

Mr. Mudd: That is your option. He has answered the question.

Mr. Pettibone: That is not an answer to my question.

Mr. Mudd: That is your option. But you are making the accusation that the witness knows it.

Mr. Pettibone: I don't make that accusation, and if you are making the statement that I am making that accusation, I deny that I am making any accusations, or that I made any. I did not make any accusations, and I am not making any accusations. So the record is straightened out on that point.

Mr. Mudd: Well, the record is there.

The Witness: Will you restate your question, Mr. Pettibone, and maybe I can be more specific in the answer.

Mr. Pettibone: All right, let me ask the Reporter to please re-read the question.

(Question read by the Reporter.)

A. I can answer it this way, Mr. Pettibone, that it
411 is very possible that I can fly on the 24 training
assemblies that they have during the year, and I
would receive compensation, but I might not satisfy the
requirements as laid down by the Department of the Air
Force and who placed me on flying status, and then I would
be required to fly on other days without necessarily being
compensated.

Q. (By Mr. Pettibone) Well, if you did satisfy the re-
quirements of the Air Force Regulations, would the flying
which you did to satisfy them result in your receiving
monetary compensation? A. I don't believe it would be
possible to satisfy them in 24 days.

Q. I don't understand what you mean by satisfying them
in 24 days. I mean satisfying them in whatever time period
the regulation itself provides. A. Well, I get paid for 24
training assemblies per year. All forty-eight training as-
semblies that were accomplished in 24 days.

Q. Yes, and that means any 24 days out of a calendar
year? A. That is not true necessarily.

412 Q. Well, 24 days out of a calendar year? A. Yes,
24 specified days.

Q. 24 specified days out of a calendar year? A. Yes, sir.

Q. All right, if you meet that requirement, do you receive
compensation, financial compensation, for it? A. I receive
financial compensation for the 24 days, yes.

Q. Does part at least of the 24 days requirement however
include or involve flight time, that is, flying an aircraft?
A. They generally would require flying, yes.

Q. So that in flying an aircraft you are accumulating
time to the satisfaction of the 24 day requirement at any
given time? A. My primary duty on those 24 days would
not be to fly aircraft, but my primary duties would be to
perform the duties of an aircraft maintenance officer. How-

ever, flying could and probably would be conducted in those 24 days.

413 Q. Well, let me go back. Possibly this is repetitious, due to the little break here. Do I understand that you said that in performing the flying activity you would be accumulating time toward the ultimate possible satisfaction of the 24 day annual requirement? A. That is not correct.

Q. Well, will you restate it and make it correct for me. I may not have it quite right. Please set it straight for me, if you will be so kind. A. I said that during these 24 days my primary duty would not be to fly an airplane necessarily but could conceivably be part of the program. My primary duty would be as an aircraft maintenance officer.

Q. Well, would your duties as aircraft maintenance officer, or aircraft maintenance chief rather, I believe, which is the correct title according to the orders which are before us as United States Exhibit No. 3, would the duties of that position require you to perform training flights? A. As an aircraft maintenance chief?

Q. That's right. A. That is not my job description 414 on these 24 days that I have reference to.

Q. In other words, the flying the aircraft relates to the 24-day requirement of the Air Force Regulations, is not part of your job description as an aircraft maintenance chief? A. That is not true.

Q. Well, what is true? A. Flying an aircraft is part of my requirement to satisfy the Department of the Air Force, since they have given me the rating and require that I make frequent and regular aircraft flights and satisfy certain minimums as outlined in Air Force Regulation 60-2 and other manuals; has nothing to do with job description.

Q. It has nothing to do with your job, or the description of the job, or the duties of the job of aircraft maintenance chief? A. That is correct.

Q. All right. We have referred to these flights which you made from time to time for training purposes. Are these

sometimes called proficiency flights, or proficiency
415 training flights? A. They are.

Q. Would that be a proper way to refer to them? I mean is that the correct way to refer to them, according to usual terminology? In other words, what are they commonly called? A. I think proficiency is the general accepted broad term for the flights.

Q. All right. Now, in addition to proficiency flights of this nature did you make any other kinds of flights at any time? A. I did.

Q. How would you describe those flights? A. I have made flight check flights on the aircraft and equipment, in which there is an element of proficiency gained.

Q. What do you mean by a flight check flight? What is the specific purpose of a flight of that nature? A. I was qualified to evaluate the condition of an aircraft after, for instance, certain maintenance had been performed; to be a flight check of the equipment that was—it would be a flight check of the equipment.

416 Q. That would be a different kind of a flight from a proficiency flight then? A. Proficiency would be attained in that flight as well as in the other flight, or maintained.

Q. Yes, I suppose one could say any kind of a flight you make for any purpose would in that respect be a proficiency flight, would it not? A. I would think so, yes.

Q. But I am not referring to that aspect of it. This would be a flight made for a purpose specifically other than proficiency. The proficiency, in other words, would be only incidental, is that correct? A. Possibly.

Q. Well, excuse me now, Captain McCoy. I don't like the answer "possibly" because it is either yes or no. Could you say one or the other for me? A. I think I stated a moment ago that proficiency is the broad term that is applied to flights, since, as you have stated, an element of proficiency is gained from all flights. Now, I will not dif-

ferentiate between one type flight and say it is a proficiency and the other type is not a proficiency flight.

Q. No, I realize that and that is not what I asked you. The question is this: The specific, immediate purpose of a check flight is not your proficiency, if you make it to determine mechanical condition of the aircraft, is that right? A. That is correct.

Q. All right. Did your employment as aircraft maintenance chief involve a requirement that you make from time to time check flights, that is check flights or maintenance operational checks? A. There is no requirement to my knowledge in the job description of an aircraft maintenance chief that he be a rated pilot and be required to make flight checks or other checks on the equipment.

Q. Now turning specifically to the day of May 20, 1958—

Mr. Wolcott: Could you excuse me a minute. Could you read the last question and answer back?

(Question and answer read by Reporter.)

Mr. Wolcott: Before you ask the next question I'd like to move to strike out the answer as not responsive.

The Witness: I would be happy to make an addition to the answer if it will help.

Mr. Wolcott: Go ahead. Make an addition.

The Witness: To further answer Mr. Pettibone's question let me say that—

Mr. Pettibone: Well, now hold it just one moment, please, Captain McCoy, before you proceed.

Mr. Wolcott: He has a right to complete it.

Mr. Pettibone: I didn't say he didn't. I just asked for a moment's pause.

Mr. Wolcott: Okay. I'm sorry.

Mr. Pettibone: Well, you have something further you want to say, Captain McCoy?

The Witness: Yes, as an addition to the answer to your question, since I was in the capacity of aircraft maintenance officer for the 104th Fighter Squadron—

Mr. Pettibone: Excuse me. You mean as aircraft maintenance officer you are referring to your capacity at that time as a Captain——

The Witness: That's right.

419 Mr. Pettibone: —in the Air National Guard, as distinguished from your employment as aircraft maintenance chief. Is that what you mean?

The Witness: That is correct.

Mr. Wolcott: No. I don't see what——

Mr. Pettibone: Well, he said officer, Mr. Wolcott, and the term here is "chief".

Mr. Wolcott: I understand then he has three jobs. His job as an Air National Guard Captain is one. Then the other job is aircraft maintenance chief.

Mr. Pettibone: That's right, two jobs.

Mr. Wolcott: But you are making a third one, aircraft maintenance officer.

Mr. Pettibone: He used the term "officer". Let the Reporter read it back.

Mr. Wolcott: Maybe he used it, but I am trying to get it straight.

The Witness: In my capacity as a Captain in the Air National Guard, with the job description of an aircraft maintenance officer and being qualified to perform flight

420 checks on equipment, and as I stated before there is no requirement in the aircraft maintenance chief job description to make these flights, but since I was there full time and had this dual responsibility then again with an eye for safety in the best operating equipment I felt that it was necessary that these flights be accomplished and in the absence of the base maintenance supervisor, who would normally make these flights, I did so. I accomplished them.

Q. (By Mr. Pettibone) Well, I gather what you mean is what you are saying is that you, in a dual capacity——

Mr. Wolcott: I object to your summation, Mr. Pettibone.

Mr. Pettibone: I am asking a question.

Q. (By Mr. Pettibone) You had a dual capacity?

Mr. Wolcott: I think he has already answered and I think you should put a question, not summarize.

Mr. Pettibone: I am putting a question.

Q. (By Mr. Pettibone) You were in a dual capacity, is that right? A. I had two job descriptions, yes.

Q. Now, in one job description you were an Air-
421 National Guard Captain, is that correct? A. It is my understanding that I was an Air National Guard Captain all the time.

Q. Yes, I realize that all the time in one capacity you were an Air National Guard Captain. In the other capacity you were an aircraft maintenance chief? A. I was an Air National Guard Captain and aircraft maintenance chief.

Q. Now, in the first capacity could you make maintenance, operating check flights? A. In the first capacity, yes.

Q. In the other capacity was that part of your job? Could you make them? A. I could make them, yes.

Q. Was it part of your job to make them in that capacity? A. I was still a Captain in the Air National Guard and—

Q. That is what we talked about first. Now I am talking about the other capacity.

Mr. Wolcott: Wait a minute. I think you have gotten it all the way around. I thought first was the air-
422 craft maintenance chief. Is that the way you understood it, Captain, first capacity?

The Witness: Well, let me answer.

Mr. Mudd: Just a minute.

Mr. Pettibone: Please, Mr. Wolcott, will you let me finish my questions and then object to them?

Mr. Mudd: Captain, answer the questions that are put to you.

The Witness: Well, I want to clarify this first and second capacity that has been brought up.

Mr. Mudd: It has been gone over. Mr. Pettibone has a question. Hear the question and then see what it is. Let's have the question.

Q. (By Mr. Pettibone) Now in hopes we can keep this clear between us, Captain, I will start again all over. In one capacity you were a Captain in the Air National Guard and were in that capacity acting as aircraft maintenance officer? A. That's correct.

Q. In another capacity you were employed by the 104th Fighter Squadron as an aircraft maintenance chief?
423 Mr. Mudd: Object. I don't like the words "employed by the 104th." It is possibly misleadingly classified. It might be better—

Mr. Pettibone: I think your objection is well taken. Let me rephrase that question.

Q. (By Mr. Pettibone) You were also at the same time employed in the capacity of aircraft maintenance chief, is that correct? A. That's correct.

Q. Now did your status as aircraft maintenance officer, the duties of that assignment and position require you to make maintenance operational check flights of aircraft? A. As a rated pilot and being required to perform certain flights to satisfy the Department of the Air Force and having fulfilled the qualifications necessary to make me capable of performing operational checks on aircraft, then part of my duties I assume would be the responsibility for the aircraft and to test fly them or to flight check them.

Q. All right. Now, in the other capacity in which you were employed as aircraft maintenance chief were you either required or authorized in that capacity, distinguished from this other one, to make maintenance
424 operational check flights of aircraft? A. I don't believe any aircraft maintenance chief, per se, is authorized to make aerial flights. The authorization comes from the Department of the Air Force.

Q. Now turn specifically to May 20, 1958. Do you remember what time you reported to work that morning?

Mr. Mudd: I am going to object again if we are getting into his minute by minute, hour by hour movements on May 20th inasmuch as it was gone into in extensive detail on the original. If you have some pertinent questions I

don't mind the question on that, but if we are going to take it from the beginning of the time he reported to work—

Mr. Pettibone: No, I didn't have that in mind. I don't want to take up the time myself either to go all over every little detail. I do have a few items that I hope I can get to properly and without any delay.

Mr. Mudd: All right.

Q. (By Mr. Pettibone) I would like to start off with the question which I just asked. Do you remember what time you came to work that morning May 20th?

425 A. Approximately 8 o'clock.

Q. Now, you had planned to make a proficiency training flight on that day previous to May 20th, had you not?

Mr. Wolcott: I object to leading the witness.

Mr. Pettibone: Well, how can I speed the thing up if I don't ask him leading questions, because it is already in here. He stated it.

Mr. Wolcott: That's all right, I say, but I think you ought to conduct it just by questions in proper form.

Q. (By Mr. Pettibone) When you came to work on May 20, 1958, did you have any plans to make a proficiency training flight that day? A. I did.

Q. When had you first made those plans? A. On the previous Saturday.

Q. Had you spoken to anyone about the plans? A. I had.

Q. To whom had you spoken? A. Colonel Kilkowski.

Q. What specifically had you said to him in that
426 connection? I mean summarize what you said to him in that connection.

Mr. Mudd: Objection. It is all repetition. It has been covered before.

Mr. Wolcott: I join in the objection.

Mr. Pettibone: Well, obviously between Mr. Wolcott and Mr. Mudd I wouldn't be able to ask any questions.

Mr. Mudd: That is not correct.

Mr. Pettibone: If I ask a leading question Mr. Wolcott objects. If I make a direct question Mr. Mudd objects.

Mr. Mudd: I think you have done pretty well.

Mr. Wolcott: That is the first time I interposed that kind of objection after three hours or so.

Mr. Pettibone: Well, I haven't equalled your time yet, Mr. Wolcott, in spite of the three hours.

Mr. Mudd: God forbid.

Mr. Wolcott: Well, it is there for you to shoot at.

Mr. Pettibone: Let's have a five minute break.

(Thereupon, there was a short recess taken.)

427 Q. (By Mr. Pettibone) Did you mention to Colonel Kilkowski on the Saturday preceding May 20, 1958 that you wanted to take a passenger with you on the plane? A. I believe that is in the record, Mr. Pettibone.

Mr. Mudd: Just a minute. And for the record I am going to object and instruct the witness not to answer any further questions dealing with May 20th inasmuch as it was covered extensively at the prior two sessions of the deposition and the copies of those depositions have been available to counsel for the Government for some two or three weeks at this time and now to go back and ask questions which have already been covered seems to me to be within the Federal Rule granting the witness protection from harassment.

Mr. Pettibone: Do you mean you object?

Mr. Wolcott: Well, I'd like to note that I disagree with Mr. Mudd here. I think the counsel of the Government has a perfect right to cross examine.

Mr. Pettibone: I just want to get one thing clear. Do you refer to any question I asked him about the events of May 20, 1958? That is what you said.

428 Mr. Mudd: No. I understood originally, Mr. Pettibone you had several specific points that you wanted cleared up or brought out. I have no objection to those, but to go back to items that have already been covered, to me seems burdensome and harassing the witness, which the witness should be protected from, I think. I also understood at the beginning of the deposition that counsel would attempt in an orderly fashion to let Mr. Galihier conduct

the original investigation and that there would be an attempt by counsel thereafter not to plow the same field and in my judgment this field has been well plowed in the last two Saturdays to which Captain McCoy submitted to deposition.

Mr. Wolcott: Well, I'd like to say in view of the remark of Mr. Mudd that I entirely disagree with him. I have gone over the record and I don't think the field, to use the colorful description supplied by Mr. Mudd has been—that the same furrow has been plowed twice. The field may have been better plowed, but not the furrow and I certainly don't object and I think Government counsel has the right to cross examine.

429 Mr. Mudd: See. Now, Mr. Wolcott is on your side, Mr. Pettibone.

Mr. Wolcott: Well, I think he has a right—

Mr. Pettibone: Well, you will force me, if you instruct the witness not to answer the next question which I have, you will force me to terminate the proceeding, Mr. Mudd, so we can take the matter before the Court.

Mr. Mudd: It is all right.

Mr. Pettibone: Because I think you are denying my rights, the Government's rights, the United States' rights.

Mr. Mudd: That's all right.

Can I confer with my client for a moment?

Mr. Pettibone: Certainly. Go right ahead.

Mr. Mudd: Captain McCoy says he thought you were under the impression that I had said "any question." I didn't mean to imply any question. I accepted your suggestion earlier that you had a few points you wished to bring up and if they are new points or unclear points or additional points I, of course, have no objection to them but I do object to covering the same material that has already been covered, and if you'd care to discuss with me in private or in public the general areas that you wish
430 to inquire into perhaps it can be worked out.

Mr. Pettibone: Well, I am endeavoring to the

Q. (By Mr. Wolcott) Will you answer that, please? A. I believe that all of the CARs are included in Air Force Regulations 66-D as they apply.

Q. Yes. Now, what manuals were used by you in connection with the operation and maintenance of T-33 type aircraft? A. Operation Technical Order T-33-A-1, which is the operation manual, or aircraft operation manual technical order.

Q. Does that also include maintenance, or is that the general operation? A. No, maintenance; the general maintenance manual would be IT-33-A-2, and it shreds out for all types of maintenance.

217 Q. Captain, who is the Air Force liaison officer
218 stationed at the base? A. Major Britton.

Q. Can you give me his full name? A. Milton D. Britton.

Q. Are there any other Air Force personnel stationed at the base? A. There are.

Q. Could you tell us who they are, please? A. I am not positive of the names.

Q. As best you can and also while you are at it just give us their function, please. A. I can't be positive. There is Sergeant Baldwin, Sergeant Storm, and one whose name escapes me at this moment.

Q. What are the functions of these sergeants? A. These people are to assist Major Britton in advisory services in the maintenance area, the administration area, and weather flight.

219 Q. Is there a manual, or are there manuals used
in connection with that function? A. We are governed by manuals and regulations that also govern Major Britton and assist him.

Q. Are these manuals Air Force manuals? A. They are.

Q. Issued by the United States Government? A. That's right.

220 Q. Can you recall any? A. Air Force Regulation 60-16 is the governing regulation and it is accompanied by manuals that are—manual the details.

223 Q. (By Mr. Wolcott) Did Major Britton have an office there at Martin? A. He did.

Q. How was that designated? A. The physical identification of the office I believe is Air Advisor's Office.

Q. And is there a United States Air Force plate, insignia, or sign there? A. Not to my knowledge. No.

Q. Is that located in proximity to other officer personnel at the Air Force Base? A. It is.

Q. How close is that? Is that part of the same building?

A. It is the next office; adjoining offices.

224 Q. Next office to whom? A. To the squadron commander and the base detachment commander.

Q. Who is that? A. Squadron commander is Major John F. R. Scott, Jr.; and the base detachment commander is Lieutenant Colonel Victor Kilkowski.

Q. Who is here and has been here throughout this proceeding, is that correct? A. That is correct. Colonel Kilkowski has been—

Q. Pardon me. A. Colonel Kilkowski has been here. Major Scott hasn't.

Q. That's right. Thank you.

Now, did Major Britton ever accompany anyone on flights? A. He has.

Q. Is that part of his regular procedures? A. I believe that part of his duties are to assist with the standardization of training and performance of the air group personnel.

225 Q. Did Major Britton also inspect the aircraft from time to time? A. As part of a pilot's normal

duties he would inspect the aircraft for its fitness before flight.

Q. Now you are referring to the time that he would be piloting a plane? A. That's right.

Q. Now, apart from that, would he inspect the squadron? A. Well, his office from time to time inspects aircraft and training.

Q. Thank you for the suggestion, Captain. So when I refer to Major Britton I will include his office. That is, his staff; the sergeants, I think that you mentioned. A. That's correct.

Q. They assist him in performing that function.

Well, just what do the sergeants do? A. They assist Major Britton in the performance of his duties through inspections and observations of the activities of the squadron.

Q. Is Major Britton and his staff there full time? A. Major Britton is regular Air Force, or he is full-time Air Force.

Q. I see, and he is there all the time at Martin? A. He is there the normal workday, yes.

Q. And how many hours is that, and what are the times involved? A. That is five days a week, roughly eight hours a day.

Q. Is that weekdays? A. Tuesday through Saturday.

Q. Tuesday through Saturday. That also applies to the sergeants? A. That's correct.

227 Q. What are the points of contact you have in the course of your duties at the Martin Air Force Base with Major Britton or his staff? A. The inspections that—

Mr. Pettibone: One moment, please, before the witness answers. I will object to the form of the question.

Mr. Wolcott: All right. Please answer it.

The Witness: The inspections that Sergeant Baldwin would complete are generally forwarded to the commander,

Major Scott, with Major Britton's signature, and then they are forwarded to me for action to comply with the discrepancy, or so forth, at the Martin Airport.

248 Q. (By Mr. Wolcott) Now, Captain, what do you
249 understand local flying area to mean? A. The local flying area, as I understand it, is as dictated by the commander through the operations officer.

Q. And is that a particular area to which you are physically limited in the operation of your aircraft?

Mr. Mudd: Objection.

The Witness: Shall I answer?

Mr. Mudd: Sure. Go ahead.

Mr. Wolcott: Yes. Go ahead. Answer.

The Witness: The only local flight clearance, VFR local flight clearance, the S.O.P. confines the operating—the operation of the aircraft to the local flying area, yes, sir.

Q. (By Mr. Wolcott) Well, now, on May 20th, 1958, were you limited to this local flight area? A. I was limited by S.O.P. with the type clearance I had to local flight area.

Q. The local flight area that we have just discussed, is that right? A. As near as I can determine, yes, sir.

Q. Now, in the performance of your duties as maintenance officer what uniform did you wear, Captain?

250 A. The uniform that I have on right now.

Q. Are there any other uniforms that you wear at the base other than what you have on now? Any other types of uniforms? A. Only the summer version of the same type of uniform.

Q. I see, and this is the same as completely identified by you last week? A. That is correct.

Q. So that whether you are performing flying duties or maintenance duties, or caretaker duties, or inspection duties, you always wear this uniform or the summer version thereof, is that right? A. Normally in the operation of an aircraft, you would not wear this uniform. Otherwise, yes.

Q. Now, in the operation of an aircraft you are talking about flight now? A. That's right.

Q. What uniform do you wear? A. You would wear the flight equipment, flight gear.

251 Q. Which consists of what? A. Flying suit, flying boots, gloves, helmet, parachute.

Q. Is that worn over your uniform? A. Not normally.

Q. You take your uniform off and put that on? A. That's correct.

Q. Now, what insignia does this flying gear have or markings? A. It is identified as property of the United States Air Force.

255 Q. Yes. Now, on this particular occasion who conducted the pre-flight inspection? A. Maintenance personnel.

Q. Who is that? A. I believe that was Sergeant Nolan.

Q. Is there a record or form made of this pre-flight—
A. There is.

Q. And what is the form called, or how would you identify it? A. This inspection is recorded in one section
256 of the, again 781 form.

Q. Is Sergeant Nolan in the employ of the United States? A. Sergeant Nolan works as an air technician with the Maryland Air National Guard.

Q. And so far as you know is he paid by the United States? A. As far as I know his pay check is drawn on the Treasurer of the United States.

Q. Is he a full-time employee? A. He is a full-time employee.